

POLICE DEPT.

Board vetoes contract call

Decision by town manager not to renew police chief overturned

By SUSANNA SHEEHAN
& JUSTIN GRAEBER, CLIPPER STAFF

In front of a standing-room only crowd that spilled into the hallway, a majority of Duxbury selectmen voted to overturn the town manager's decision not to renew Police Chief Mark DeLuca's contract when it expires in November.

The crowd came to the selectmen's meeting Monday to hear what action the board would take after a June 4 letter from Town Manager Richard MacDonald informed the chief his contract would not be renewed.

READERS SOUND OFF

To read letter from both sides of the police chief contract issue, see page 20.

Town Counsel Robert Troy explained that legally, selectmen had to decide whether or not the non-renewal of DeLuca's contract was to be considered a "removal" from employment under town bylaws.

Troy said the board could then decide whether to "ratify," or formally approve, MacDonald's decision. Select-

Board splits on police chief contract issue

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men could affirm, overturn or choose to take no action on this issue at all, he said.

DeLuca and his attorney, Gerald McAuliffe, were also present at the meeting.

The Town Manager's Act of 1987 states that the Board of Selectmen "shall act upon each appointment and removal made by the town manager within fifteen days following notification."

During the meeting there was a lengthy discussion by Troy, selectmen and members of the audience about whether not renewing DeLuca's contract was the same as terminating him.

"I think the question is this: is a non-renewal equal to a removal? If it is, then it provides the selectmen with the authority to act," said Selectman Jon Witten.

Selectmen Christopher Donato and Witten voted in favor of a motion that interpreted the non-renewal of the contract as a removal. Selectmen Chairman Betsy Sullivan

voted against this motion.

Donato and Witten then voted in favor of a motion overturning the town manager's decision. Sullivan voted against.

Despite the selectmen's vote, Troy said the power to actually renew the contract was "beyond the authority of the board."

"That is a matter of law," Troy said. "The town manager act is very clear. The town manager negotiates all contracts for the town. If the police chief is going to have another contract, that is going to be the decision of the town manager."

Troy said the intent of the Town Manager Act of 1987 was to have a strong manager "but not one with unbridled authority," and that the ratification clause was intended to be a "check and balance."

Before the board voted, Sullivan said she did not want to make any decision that would undermine MacDonald's authority.

"I believe what we have in front of us is bigger than any



Town counsel Robert Troy reads explains the board's legal options while Selectman Christopher Donato looks on.

one individual," said Sullivan. "This decision affects how we go forward in how we govern ourselves."

"We do not have the ability to appoint a chief," Sullivan continued. "At this point, whether we ratify or not, I do not have that ability. I will not assume it."

Witten said he believed the board had the ability to make the motion.

"If I thought it was in violation of the [town manager] act, I would vote against it," said.

Witten also said he did not want to weaken MacDonald's position as town manager, but

MacDonald needed to have a reason for not renewing DeLuca's contract.

"I am not approaching this lightly," said Witten. "Nobody wants to undercut the author-

ity of the town manager, but the police chief has rights under the Town Manager Act. This isn't a popularity contest. If I'm being asked to remove a department head, there has to be just cause ... There is no cause on the table and it not sufficient to say we are just not going to renew your contract." He said that he was "frustrated" at having been put in the position he was in Monday.

For Donato, the determination was a simple one to make.

"In reality, it's a termination," said Donato. "At the end of the contract, he's not working for us."

A phone call to the Massachusetts Municipal Association seeking to clarify the issue was referred to James Lampke, president of the City Solicitor and Town Counsel

Association. Lampke deferred to Troy's opinion and would not comment on Duxbury's situation specifically, but said: "A non-renewal of a contract is not a termination, generally."

At one point in the meeting, Donato said that if the Board of Selectmen did not vote that night on whether to ratify MacDonald's decision they would be sued. Although Sullivan interrupted him, saying the topics he was broaching should be discussed behind closed doors, Donato continued, alleging that MacDonald went after DeLuca because he was involved in forming a manager's union. Donato also referred to a lack of evaluations of the police chief's performance by MacDonald.

When Donato brought up the issue of a potential lawsuit, audience member Bob Doyle stated, "that's a threat," which Donato denied.

After the meeting, DeLuca deferred comment to his attorney. McAuliffe said that he was pleased with the results of the meeting and what happens next is up to the Board of Selectmen.

"I asked for two things and I got them," he said. "I suppose I'll wait to hear from them."

School
Donald regarding the police chief's contract.

Sullivan objected to this idea: "That isn't even a gray area. It flies in the face of the Town Manager Act. I would be opposed to that suggestion. We get to weigh in on his (the town manager's) contract, on his performance but we don't get to usurp his authority."

Sullivan agreed to discuss Donato's proposal in a closed-door session and at the end of their meeting, selectmen voted unanimously to go into executive session with Troy to discuss contract negotiations with non-union personnel. The results of the session were not disclosed, and neither DeLuca nor his attorney were present during the executive session.

MacDonald, who was present throughout the meeting, didn't comment during the discussion.

When asked Tuesday what the town's next move was, Witten said the ball was in MacDonald's court. He said he could not divulge too much or it would reveal what was discussed in executive session, but he did say this: "Now the police chief has a contract through Nov. 20. It's only June."

Donato did not respond to an e-mail seeking further comment. Sullivan did not return a phone call as of press time.

Donato addresses conflict of interest

By SUSANNA SHEEHAN, CLIPPER STAFF
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Selectman Christopher Donato addressed his connection to the police department Monday night.

"Prior to my wife resigning, I was not involved in these discussions," he said.

He said his wife had worked for Police Chief Mark DeLuca as his administrative secretary but that she had resigned on June 10 so that he could act in the capacity of a selectman on issues related to the police department.

"In order to do what I think is the right thing, she gave up a job she loved," said Donato. "I no longer have a financial interest (related to the police department)."

Donato said from the very first day he began his campaign for selectman he looked into the state ethics law to determine whether or not he would have a conflict of interest with issue regarding the police department. He also asked for an opinion

from Town Counsel Robert Troy.

Troy issued that opinion on May 29. In it, Troy said Donato could not act upon matters involving the police department because they had a financial interest due to his wife's employment, and could not act upon matters involving the police chief because he was Donato's wife's immediate supervisor. These matters included the chief's employment, his contract, performance reviews, disciplinary matters or commendations, stated Troy's memo.

At Monday's meeting Troy said that since Donato's wife was not longer employed by the police department, the conflict was removed, but added Donato was still required to file a disclosure form with the town clerk's office explaining what had taken place.

Troy said Monday that Donato correctly filed the disclosure with the town clerk.